

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Denial of an Application
for a Notary Public Commission of
Stephanie Disse

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on June 23, 2010, at 9:30 a.m., at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101. The OAH record closed at the conclusion of the hearing that day.

Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Commerce (the Department). Stephanie Disse (Respondent) did not appear for the hearing.

STATEMENT OF ISSUES

The issue presented in this case is whether the Respondent's application for a notary public commission should be denied because she has been convicted of a crime involving moral turpitude and because her conduct has demonstrated that she is untrustworthy or unqualified to act under authority granted by the commissioner.¹

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent was licensed as a notary by the State of Minnesota from 2003 to 2007, when her commission lapsed. In January 2010, she filed a new application for a notary commission.

2. On May 21, 2010, the Department sent by first class mail a copy of the Order Denying License Application, Statement of Charges, and Notice of Hearing to Respondent.²

¹ See Minn. Stat. §§ 359.12 and 45.027, subd. 7 (2008).

² Affidavit of Service by U.S. Mail (May 21, 2010).

3. The Notice of Hearing scheduled a hearing in this matter at 9:30 a.m. on June 23, 2010, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

4. The Notice of Hearing provides that the Respondent's failure to appear at the hearing may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that the Respondent's application may be denied.³

5. The Respondent did not appear for the hearing on June 23, 2010, nor did she contact the Administrative Law Judge prior to the hearing to seek a continuance or request any other relief.

6. Because the Respondent failed to appear for the hearing, she is in default.

7. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

8. In 2005, the Respondent was convicted in Becker County District Court of felony theft by swindle of approximately \$15,000. The Respondent purposely destroyed records in an effort to cover up the theft.⁴

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50, 45.027, and 359.12.

2. The Department provided timely notice of the hearing to the Respondent, and this matter is properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations set out in the Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

³ Notice of Hearing at 3.

⁴ Statement of Charges ¶ 2.

5. The Respondent is in default as a result of her failure to appear at the hearing.

6. The Commissioner may, by order, deny, suspend, or revoke the authority of a notary public if the commissioner finds that: the order is in the public interest; and the person has violated any law, rule, or order related to the duties and responsibilities entrusted to the commissioner; or the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority granted by the commissioner.⁵

7. A notary who has pleaded guilty or been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude is subject to the penalties imposed pursuant to section 45.027.⁶

8. Disciplinary action against the Respondent is in the public interest.

9. The Respondent's conviction of felony theft by swindle in 2005 is a crime involving moral turpitude, as provided in Minn. Stat. § 359.12, and it demonstrates that she is untrustworthy or otherwise unqualified to act under authority granted by the commissioner, as provided in Minn. Stat. § 45.027, subd. 7.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the denial of the Respondent's application for a notary public commission be AFFIRMED.

Dated: June 25, 2010

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default

⁵ Minn. Stat. §§ 45.011, subds. 1 and 4; 45.027, subd. 7 (2008).

⁶ Minn. Stat. § 359.12 (2008).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Emmanuel Munson-Regala, Deputy Commissioner, 85 East Seventh Street, Suite 500, St. Paul, MN 55101, to learn about the procedure for filing exceptions or presenting argument. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a.